

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the director's decision will be withdrawn, and the petition will be approved.

The petitioner describes itself as a professional consulting and technical placement services business. It seeks to employ the beneficiary permanently in the United States as a "Sr. Application Developer." The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The director's decision denying the petition concludes that the beneficiary does not have a U.S. bachelor's degree or foreign equivalent degree as required by the terms of the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's degree.
- H.4-B. Major Field of Study: "Computer Science, Computer Engineering, or related."
- H.6. Experience in the job offered: 60 months.
- H.8. Is there an alternate combination of education and experience that is acceptable? No.
- H.9. Is a foreign educational equivalent acceptable? Yes.
- H.10. Experience in an alternate occupation: 60 months of experience in "the job offered or related position."
- H.14. Specific skills or other requirements: "Experience using COBOL, IMS DB/DC AND DB2 programming skills, Payer's CDHP (Consumer Driven Health Plan) expouser, RUP (Rational Unified Process), prior Middleware tool usage and z/OS application processing experience"

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

SAS (mainframe and client server), JAVA/J2EE, Oracle, XML. Experience in Consumer Directed Healthcare/Claims processing. Will also accept any suitable combination of education, training, and/or experience.”

The AAO sent the petitioner a request for evidence (RFE) on December 24, 2012. The petitioner responded with new evidence including its recruitment and a new credentials evaluation. After a review of the record including the evidence submitted on appeal and in response to the AAO’s RFE, the AAO finds that the beneficiary is qualified for the position offered.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The director’s decision is withdrawn, and the petition is approved.